

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Denial of the Tax
Clearance Certificate of:
James L. Keating
9925 Justen Trl N.
White Bear Lake, MN 55115-1327
Tax ID No. 515442835

FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on Friday, October 1, 1999 at 1:00 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. The record closed on October 28, 1999, upon receipt of the final memorandum from a party.

Wayne Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert St., St. Paul, Minnesota 55146-0220 appeared on behalf of the Department of Revenue. James L. Keating, 9925 Justen Trail North, White Bear Lake, Minnesota 55115-1327 appeared on his own behalf.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Matthew Smith, Commissioner of Revenue, 600 North Robert Street, St. Paul, MN 55146 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent owes in excess of \$500.00 in delinquent taxes, penalties, or interest, thereby requiring a denial of the issuance of a tax clearance certificate.

Based upon all of the proceedings in this case, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 15, 1998 the Department wrote to Victoria Keating and required her to substantiate the capital investment interest claimed on income tax returns for the years 1994, 1995 and 1996. The letter listed five items to be supplied to the Department.^[1]

2. On July 9, 1998 the Department again wrote to Mrs. Keating noting that it had not received any information from her and advising her that if documentation was not provided for the losses claimed for the 1994-1996 individual tax returns they would be disallowed.^[2]

3. When no information was received the Department sent an individual income tax audit report to James and Victoria Keating dated November 6, 1998. The audit report assessed an additional tax and interest of \$15,560.71.^[3] The report advised the taxpayers that payment was due or an appeal had to be filed by January 5, 1999. The audit report was accompanied by an audit appeal form which the taxpayer can return to the Department in order to contest the additional tax assessed.^[4]

4. Neither Mr. or Mrs. Keating filed an appeal of the additional tax assessed.

5. When no appeal was received following the tax audit report, the case was then turned over to a collection officer with the Department.^[5]

6. On July 9, 1999 the Department's collection officer wrote to Mr. Keating advising him that he should contact her immediately with a proposal for repayment of the tax liability and indicating that if no response was received by July 13 his insurance agent license would not be renewed.^[6]

7. On July 14, 1999 the Department wrote to the Minnesota Department of Commerce and advised it that the Respondent had an outstanding tax liability and that the Commerce Department should not issue, renew or transfer an insurance agent license to Mr. Keating until the Department of Revenue issued a tax clearance certificate.^[7]

8. The Department also sent notice to Mr. Keating that his insurance agent license could not be issued until the tax liability was paid. It also advised the Respondent of his right to a hearing to contest this action.^[8]

9. Mr. Keating filed a request for an administrative hearing concerning a tax clearance certificate.^[9]

10. On approximately April 13, 1999 and July 11, 1999 Mr. Keating did send information concerning tax basis to the collection officer concerning the losses claimed in 1994 and 1995.^[10]

11. On August 5, 1999 Mr. Keating wrote to the Department requesting an administrative review the conduct of the collection officer alleging that the collection officer had received faxes concerning the losses, but claimed she had not received them.^[11]

12. On August 27, 1999 the collection officer's supervisor responded to Mr. Keating indicating that the collection officer's performance was proper. The letter indicated that the opportunity to appeal the audit for the 1994 and 1995 returns expired 60 days after November 6, 1998. The letter stated that the collection officer never had

authority or responsibility for making decisions or determinations about the correctness or validity of information submitted or to change the audit/assessment. The Respondent was advised that the Department's revenue tax specialist had to be contacted with regard to audit issues including substantiation of Mr. Keating's assertion that no taxes are due.^[12]

13. On September 3, 1999 the revenue tax specialist for the Department wrote to Mr. and Mrs. Keating acknowledging receipt of faxed copies from the collection officer concerning the tax basis. The letter advised the Respondent that the information submitted did not prove basis and that he must submit copies of cancelled checks showing what was paid for capital stock, copies of loan agreements and cancelled checks showing how much he had borrowed to the corporation, any proof showing that the Respondent had taken money from his personal account and put it into the corporation, or any debts of the corporation that the Respondent paid personally. The Department advised Mr. Keating that until these documents were received and reviewed the assessment would stand as correct and collection action would continue.^[13]

14. As of the date of the hearing the Respondent had a total tax liability of \$22,698.49.^[14]

15. At the hearing Mr. Keating submitted three documents relating to the basis claimed on his tax returns that he believes demonstrates that the tax assessment was invalid.^[15] The documents are not supported by the items requested by the revenue tax specialist in her September 3, 1999 letter.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have jurisdiction in this case pursuant to Minn. Stat. § § 14.50 and 270.72.

2. The Department gave proper notice of the hearing in this matter and has fulfilled all other relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 270.72, subd. 1 provides in part as follows:

The state or a political subdivision of the state may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade or business, if the Commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The Commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500.00 or more in delinquent taxes or has not filed a return. ... A licensing authority that has received a notice from the

Commissioner may issue, transfer, renew, or not revoke the applicant's license only if (a) the Commissioner issues a tax clearance certificate and (b) the Commissioner or the applicant forwards a copy of the clearance to the authority. The Commissioner may issue a clearance certificate only if the applicant does not owe the state any uncontested delinquent taxes, penalties, or interest and has filed all required returns.

4. Minn. Stat. § 270.72, subd. 2(b) states that:

"Delinquent taxes" do not include a tax liability if (i) an administrative or court action which contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the liability has not expired, or (iii) the applicant has entered into a payment agreement and is current with the payments.

5. The Respondent has not demonstrated that he has entered into a payment agreement, that the appeal period to contest the tax liability has not expired, or that he has filed a timely administrative or court action to contest the amount or validity of the liability.

6. The appeal period to contest the liability assessed by the Department on November 6, 1998 expired on January 5, 1999.

7. The Department provided the Respondent with notice of his assessment appeal rights but the Respondent failed to timely file an appeal.

8. The Respondent owes delinquent taxes, penalties and interest in the amount of \$22,698.49.

9. These conclusions are reached for the reasons set forth in the memorandum below, which is incorporated by reference into these conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED: That the Commissioner of Revenue not issue a tax clearance certificate to the Department of Commerce on behalf of James L. Keating.

Dated this 5th day of November 1999.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Taped (not transcribed)

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The taxpayer in this case failed to contest an assessment of additional tax which was mailed to him on November 6, 1998. The deadline for appeal indicated in the notice was January 5, 1999. At the hearing Mr. Keating testified that he did not receive this document. However, he acknowledged receiving other correspondence from the Department at the same address to which the audit report was sent. Additionally, despite a lengthy correspondence with the Department, the hearing was the first time that Mr. Keating suggested that he had not received the audit report, with its appeal rights included. It is more likely than not that the taxpayer did receive the tax audit report assessing an additional tax plus interest of \$15,560.71.

The Department argues that this contested case proceeding cannot be used as a forum to argue the validity of a tax assessment after the appeal period of that assessment has expired.^[16] The taxpayer continues to dispute the accuracy of the additional tax assessment and submitted some documentation at the hearing in support of his allegations. The documentation submitted falls short of that called for by the Department in its correspondence, however. The appeal period to contest the tax liability would have little meaning if a taxpayer could continue to contest the delinquent taxes indefinitely. The legislature specifically indicated that delinquent taxes do not include those in which the appeal period has not expired and therefore it would seem that when the appeal period has expired delinquent taxes exist within the meaning of the tax clearance certificate statute.^[17] Had the Respondent served a timely appeal the Commissioner would not be able to proceed with a notice to the licensing authority since an administrative action contesting the amount of the liability would have been filed within the meaning of Minn. Stat. § 270.72, subd. 2(b)(i).

The ALJ asked the parties to discuss the application of Thayer v. Commissioner (Minn. Tax. 1999) 1999 WL 200679, to this case. Mr. Keating suggests that the audit report does not constitute an appealable final order and notes that the Department is still requesting information to resolve the matter. The Department points out that, contrary to the situation in Thayer, the notice in this case did refer to an appeal to the Minnesota Tax Court and to the 60-day appeal period. Additionally no appeal was filed by Mr. Keating in this case, while one was filed in Thayer. The fact that the Department is willing to continue to listen to and accept information from the taxpayer does not mean that the audit report is not an order. The inclusion of appeal rights in the audit report is sufficient to classify it as an order.

Although the appeal period has expired, the Department has nonetheless been willing in subsequent correspondence to examine the data submitted by Mr. Keating. Mr. Keating apparently did not understand that the collection officer lacked authority to determine the validity of the assessment. His submissions to her were forwarded to the revenue tax specialist who can consider adjusting the assessment. Mr. Keating

complains that the first request from the department for supporting documentation such as cancelled checks occurred in September of 1999 and that earlier correspondence such as the July 9, 1998 letter merely asked for documentation. Mr. Keating complains that he did attempt to contact the revenue tax specialist without success.

Based upon the September 3, 1999 letter the taxpayer now has a clear idea of what exactly must be provided to the Department to support his claim that the losses claimed in the 1994 and 1995 returns were appropriate. Although the Department is at this point justified in issuing its notice to the Department of Commerce, it has suggested that the taxpayer provide the further documentation requested to the revenue tax specialist to attempt to resolve this matter and to permit the Commissioner to issue a tax clearance certificate in this case.

The ALJ is very concerned about the submission by the Department of the original Ex. 6 into evidence in this proceeding. That exhibit (which contained the word "order") has nothing to do with this case. The corrected Ex. 6 does not contain the word "order" in its appeal rights section. The Department must take greater care in assembling its evidence in cases of this nature.

^[1] Ex. 4, p. 3.

^[2] Ex. 4, p. 2.

^[3] Ex. 5.

^[4] Corrected Ex. 6.

^[5] Ex. 4.

^[6] Respondent Ex. B.

^[7] Ex. 1, p. 1.

^[8] Ex. 1, p. 2-3.

^[9] Ex. 2.

^[10] Ex. 4.

^[11] Ex. 7, p. 3-4.

^[12] Respondent's Ex. A.

^[13] Ex. 4.

^[14] Ex. 3.

^[15] Ex. C, D, E.

^[16] An order of assessment is final when made. Minn. Stat. § 289A.37, subd. 1.

^[17] See Minn. Stat. § § 270.10, subd. 5(2) and 289A.37, subd. 1(b).